

Remarks

Claim 1 is canceled. Claim 23 is amended herein for a clerical error.
Claims 2-24 remain pending in the Application. No new matter has been added.

Rejection under 35 U.S.C. §103(a)

Claims 2-24

In the Office Action, the Examiner rejected Claims 2-24 under 35 U.S.C. §103(a) as being anticipated by Shimura (6370687) and further in view of Official Notice. Applicants have reviewed Shimura and respectfully states that Shimura does not teach nor render obvious the present invention for the following rationale.

Regarding Independent Claims 2, 9, 14, 18 and 23, Applicants respectfully submit that Claim 2 (Claims 9, 14, 18 and 23 include similar features) includes the features “a server code segment manager coupled to the application code transformation manager, for parsing the client application in the native binary format into a plurality of code segments, said parsing of said code segments being dynamically performed based on actual server-side and client-side execution overhead, network bandwidth efficiency and client-side storage requirements on a per client basis, and configured based on predicted code segment usage or prior code segment usage history (emphasis added).” Support for the Claimed features can be found in the Figures and Specification including Paragraph [0055].

Applicants respectfully submit that Shimura does not teach this claimed feature. Applicants do not understand Shimura to teach dynamic parsing of application code into code segments wherein the parsing of the code segments is dynamically performed based on actual server-side and client-side execution overhead, network bandwidth efficiency and client-side storage requirements on a per client basis (emphasis added).

On page 4 paragraph 2 of the present office action, in the response to arguments section, the feature of Claim 2 (Claims 9, 14, 18 and 23 include similar features) "... said parsing of said code segments being dynamically performed based on actual server-side and client-side execution overhead." This feature is addressed with the statement that Shimura teaches that both the server and client perform execution; and that execution can only take place "based on actual execution overhead". However, Applicants respectfully submit that the teachings of Shimura relied upon, do not address the claimed features. That is, the claimed features address the parsing of said code segments being dynamically performed based on actual server-side and client-side execution overhead (emphasis added).

For this reason, Applicants respectfully submit that Shimura does not teach or render obvious the claimed features and as such Claims 2, 9, 14, 18 and 23 overcome the rejection under 35 U.S.C. §103(a), and as such, Claims 2, 9, 14, 18 and 23 are in condition for allowance.

On page 4 paragraph 3 of the present office action, in the response to arguments section, the feature of Claim 2 (Claims 9, 14, 18 and 23 include similar features) "... said parsing of said code segments being dynamically performed based on actual network bandwidth efficiency." This feature is addressed with the statement that Shimura teaches that the code segments are delivered via a network; and that a network inherently has "bandwidth efficiency" and can only transmit data when there is available bandwidth. However, Applicants respectfully submit that the teachings of Shimura as relied upon, do not address the claimed features. That is, the claimed features address the parsing of said code segments being dynamically performed based on actual network bandwidth efficiency (emphasis added).

For this further reason, Applicants respectfully submit that Shimura does not teach or render obvious the claimed features and as such Claims 2, 9, 14, 18 and 23 overcome the rejection under 35 U.S.C. §103(a), and as such, Claims 2, 9, 14, 18 and 23 are in condition for allowance.

On page 4 paragraph 4 of the present office action, in the response to arguments section, the feature of Claim 2 (Claims 9, 14, 18 and 23 include similar features) "... said parsing of said code segments being dynamically performed based on actual client-side storage requirements on a per client basis (emphasis added)." This feature is addressed with the statement that Shimura teaches that the client receives and executes the Java program, and inherently must store the Java program in at least the processor's registers. However, Applicants respectfully submit that the teachings of Shimura relied upon, do not address the claimed features. That is, the claimed features address the parsing of said code segments being dynamically performed based on actual client-side storage requirements on a per client basis (emphasis added).

For this additional reason, Applicants respectfully submit that Shimura does not teach or render obvious the claimed features and as such Claims 2, 9, 14, 18 and 23 overcome the rejection under 35 U.S.C. §103(a), and as such, Claims 2, 9, 14, 18 and 23 are in condition for allowance.

Accordingly, Applicants also respectfully submits that Shimura does not teach or render obvious the present claimed invention as recited in Claims 3-8, 10-13, 15-17, 19-22 and 24 which are dependent on allowable Independent Claims 2, 9, 14, 18 and 23 and that Claims 3-8, 10-13, 15-17, 19-22 and 24 recite further features of the present claimed invention. Therefore, Applicants respectfully states that Claims 3-8, 10-13, 15-17, 19-22 and 24 are allowable as pending from allowable base Claims.

With reference to Claim 6, Applicants have reviewed Shimura and respectfully submit that the features of Claim 6 are not taught or rendered obvious by Shimura. Moreover, Applicants readily agree with the Examiner that the obvious details of implementation are omitted by the teachings of Shimura. However, Applicants submit that the obvious omission of the details of implementation of the features of Claim 6 clearly illustrate that the Claimed features were not taught or rendered obvious over Shimura.

For this reason, Applicants respectfully submit that Shimura does not teach or render obvious the claimed features of Claim 6 and as such, Claim 6 overcomes the rejection under 35 U.S.C. §103(a).

With reference to Claim 7, Applicants respectfully submit that the Examiner has provided inadequate support of a finding of Official Notice. Examiner takes Official Notice that both the concept and advantages for providing a need to link code that is compiled in sections is well known and expected in the art. Applicants respectfully submit that the claimed embodiments of "adjusting any branch targets in code segments stored in the code cache that need to branch to the received code segment and had previously been adjusted to branch out of the code cache to the client code segment manager to now branch to appropriate locations within the received code segment;

adjusting any branch instructions in the received code segment having branch targets that branch to code segments currently in the code cache to branch to the appropriate code segments in the code cache; and adjusting any branch instructions in the received code segment having branch targets that need to branch to code segments not in the code cache to branch out of the code cache to the client code segment manager to request the code segment containing the branch targets" is not considered to be common knowledge or well-known in the art, as asserted by the Examiner.

The “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge” (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

Applicants respectfully submit that the basis for Official Notice as relied on by the Examiner is not set forth explicitly, as required. Applicants respectfully submit that the Examiner has not stated why the teachings providing a need to link code that is compiled in sections are common knowledge. Furthermore, the Examiner has not stated how such teachings relate to the features of the Claim. Applicants respectfully assert that the Examiner has taken Official Notice without providing a clear and unmistakable technical line of reasoning, as required.

Applicants respectfully assert that “It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based” (emphasis added; MPEP 2144.03(E); See *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092, 165 USPQ 418, 421 (CCPA 1970)).

Accordingly, Applicants respectfully that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of Official Notice, in accordance with 37 CFR § 1.104(d)(2).

For this reason, Applicants respectfully submit that Shimura does not teach or render obvious the claimed features of Claim 7 and as such, Claim 7 overcomes the rejection under 35 U.S.C. §103(a).

Conclusion

In light of the above amendments and remarks, Applicants respectfully requests allowance of Claims 2-24.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present application.

Respectfully submitted,
Wagner Blecher LLP

Date: 4/20/07



John P. Wagner, Jr.
Reg. No. 35,398

WESTRIDGE BUSINESS PARK
123 WESTRIDGE DRIVE
WATSONVILLE, CALIFORNIA 95076
(408) 938-9060